



Department of Regulatory Agencies

**MARKET CONDUCT EXAMINATION REPORT  
AS OF DECEMBER 31, 2007**

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**SOUTHERN TITLE INSURANCE CORPORATION**

**1051 East Cary Street 7<sup>th</sup> Floor  
Richmond, Virginia 23219**

**NAIC Company Code 50792  
NAIC Group Code 228**



**CONDUCTED BY:**

**COLORADO DIVISION OF INSURANCE**

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**SOUTHERN TITLE INSURANCE CORPORATION  
1051 East Cary Street 7<sup>th</sup> Floor  
Richmond, Virginia 23219**

**MARKET CONDUCT  
EXAMINATION REPORT**

**from**

**January 1, 2006 through December 31, 2007**

**Prepared by:**

**Samuel J. Humpert, J.D.  
Title Market Conduct Examiner**

**And**

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Senior Market Conduct Examiner**

**Colorado Division of Insurance**

April 30, 2009

The Honorable Marcy Morrison  
Commissioner of Insurance  
State of Colorado  
1560 Broadway, Suite 850  
Denver, Colorado 80202

Commissioner Morrison:

This market conduct examination of Southern Title Insurance Corporation was conducted pursuant to §§ 10-1-203 and 10-1-204, C.R.S., which authorize the Commissioner of Insurance to examine title insurance companies. The examination was conducted as a desk examination in the office of the Colorado Division of Insurance. The market conduct desk examination covered selected business practices associated with the ownership and operation of a title insurance company for the period of January 1, 2006, through December 31, 2007.

A report of the desk examination of Southern Title Insurance Corporation is hereby respectfully submitted.

Samuel J. Humpert, J.D.  
Title Market Conduct Examiner

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Senior Market Conduct Examiner

**MARKET CONDUCT  
EXAMINATION REPORT  
OF  
SOUTHERN TITLE INSURANCE CORPORATION**

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**COMPANY PROFILE**

Southern Title Insurance Corporation (“Southern” or “Company”) is a privately held title insurer based in Richmond, Virginia. It was incorporated in 1925 as Virginia Realty Guaranty Title Corporation. In 1948, the company’s name was changed to Southern Title Insurance Corporation. The company issues title insurance and provides related services through a network of branch and agency operations.

Southern was acquired by the Westfield Group, a 150+ year old multiple lines insurance holding group in 1999. Southern also has an agency service office in Knoxville, Tennessee.

The Company provides title insurance coverage and is licensed in Virginia, Maryland, Washington DC, North Carolina, Florida, Pennsylvania, South Carolina, Delaware, Tennessee, Georgia, West Virginia, Texas, Alabama, Mississippi, Arkansas, Colorado, Louisiana, New Jersey, Nevada, and New Mexico. The Company’s gross premium for Colorado is shown below:

Year	2005	2006	2007	2008
Premium	\$2,685,025	\$4,149,460	\$3,293,782	\$1,896,390
Market Share	.75%	1.2%	1.03%	.96%

The Company’s entire Colorado premium is related to policies issued by independent agents. The typical agency agreement provides agent retention of 85% of the gross premium. Southern elected to cancel its Colorado agency agreements in the latter part of 2008 and, although still licensed in Colorado, indicated it is no longer writing new policies here.

## **CONFIDENTIAL DRAFT REPORT**

**Market Conduct Examination**

**Southern Title Insurance Corporation**

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### **PURPOSE AND SCOPE OF EXAMINATION**

Colorado Division of Insurance (Division) staff reviewed certain business practices of the Company, in accordance with Colorado insurance law, §§ 10-1-201, 10-1-203, 10-1-204, 10-2-804 and 10-3-1106, C.R.S., which empower the Commissioner to require any person engaged in the business of insurance to be examined. The findings in this report, including all work products developed in producing it, are the sole property of the Division.

The purpose of the examination was to determine the Company's compliance with Colorado insurance laws related to title insurance companies. Examination information contained in this report should serve only these purposes. The conclusions and findings of this examination are public record.

The examiner conducted the examination in accordance with procedures developed by the Division, based on model procedures developed by the National Association of Insurance Commissioners. The examiner relied primarily on records and materials maintained and/or submitted by the Company, and its independent agencies, and provided in response to requests and questionnaires from the Division. The documents reviewed during this examination were provided by the Company in both paper and electronic format. The market conduct desk examination covered the period from January 1, 2006 through December 31, 2007.

The examination included review of the following:

- Company and Agent Operations and Management
- Rating
- Underwriting
- Escrow, Closing and Settlement Services

The examination report is a report written by exception. References to additional practices, procedures, or files that did not contain improprieties were omitted. For the period under examination, the examiners included statutory citations and regulatory references as they pertained to title insurance companies and agencies.

Examination findings may result in administrative action by the Division. Examiners may not have discovered all unacceptable or non-complying practices of the Company. Failure to identify specific Company practices does not constitute acceptance of such practices. This report should not be construed to either endorse or discredit any title insurance agency or company.

**EXAMINERS' METHODOLOGY**

The examiner reviewed the Company's business practices to determine compliance with Colorado insurance laws. For this examination, special emphasis was given to the statutes and regulations as shown in Exhibit 1.

**Exhibit 1**

<b>Statute/Regulation</b>	<b>Subject</b>
Section 10-1-128, C.R.S.	Fraudulent insurance acts – immunity for furnishing information relating to suspected insurance fraud – legislative declaration.
Section 10-1-204, C.R.S.	Conduct of Examinations
Section 10-1-205, C.R.S.	Financial examination reports.
Section 10-2-401, C.R.S.	License required
Section 10-2-702, C.R.S.	Commissions
Section 10-2-704, C.R.S.	Fiduciary responsibilities.
Section 10-2-804, C.R.S.	Investigation by commissioner.
Section 10-3-1104, C.R.S.	Unfair methods of competition and unfair or deceptive acts or practices.
Section 10-4-401, C.R.S.	Standards for Rates.
Section 10-11-102, C.R.S.	Definitions.
Section 10-11-106, C.R.S.	Determination of Insurability Required.
Section 10-11-108, C.R.S.	Prohibitions.
Section 10-11-116, C.R.S.	Title insurance agents licensed.
Section 10-11-118, C.R.S.	Title Insurance.
Section 10-11-119, C.R.S.	Laws applicable.
Section 10-11-121, C.R.S.	Application of article – other laws applicable.
Section 10-11-122, C.R.S.	Title commitments.
Section 10-11-123, C.R.S.	Notification of severed mineral estates.
Section 10-11-124, C.R.S.	Affiliated business arrangements.
Insurance Regulation 1-1-7	Market Conduct Record Retention
Insurance Regulation 1-1-8	Penalties and Timelines Concerning Division Inquiries and Document Requests
Insurance Regulation 1-2-1	Concerning Agent Fiduciary Responsibilities
Insurance Regulation 1-2-10	Concerning Regulation of Insurance Producers
Insurance Regulation 3-5-1	Concerning Title Insurance

**EXAMINATION REPORT SUMMARY**

The examination resulted in a total of seven (7) findings in which the Company did not appear to be in compliance with Colorado insurance laws. The following is a summary of the examiner's findings:

**Company and Agent Operations And Management:** The examiner identified three (3) areas of concern during the review of Company and agent operations and management:

**Issue A1: Failure, in some instances, to provide records requested for market conduct purposes.**

**Issue A2: Failure to provide adequate agency oversight.**

**Issue A3: Failure to provide adequate oversight of agent affiliated business arrangements in violation of Colorado insurance law and the Real Estate Settlement Procedures Act (RESPA).**

**Rating:** The examiners identified one (1) area of concern during the review of the Company's rating practices:

**Issue C1: Failure, in some instances, to charge accurate rates.**

**Underwriting:** The examiners identified two (2) areas of concern during the review of the Company's underwriting practices:

**Issue H1: Failure to ensure that agents comply with the notice requirements of Colorado insurance law concerning severed mineral estates.**

**Issue H2: Failure to ensure that agents conduct a reasonable examination of title and to fully disclose impairments of record.**

**Escrow, Closing and Settlement Services** The examiners identified one (2) area of concern during the review of the Company's escrow, closing and settlement services:

**Issue K1: Failure by the Company to ensure that all funds disbursed by its authorized agents at closings were accurately reported on the HUD-1 form.**

**MARKET CONDUCT EXAMINATION REPORT**

**FACTUAL FINDINGS**

**SOUTHERN TITLE INSURANCE CORPORATION**

**COMPANY AND AGENT OPERATIONS AND MANAGEMENT**

**Issue A1: Failure, in some instances, to provide records requested for market conduct purposes.**

Section 10-11-116, C.R.S., Title insurance agents licensed, states in part:

- (4) A licensed contractual agent of a title insurance company shall preserve and retain its closing and settlement services and escrow files for a period of not less than seven years after the closing, or completion, of said files. In lieu of retaining the original files, a licensed contractual agent of a title insurance company may, in its regular course of business, establish a system whereby the files are recorded, copied, or reproduced by any photographic, microfilm, or other process which accurately reproduces or forms a durable medium for reproduction of the original files. Upon cessation of business by a contractual agent of a title insurance company the files shall be deposited with the division of insurance or with a title insurance company or licensed contractual agent of a title insurance company authorized by the division of insurance.

Colorado Insurance Regulation 1-1-7, Market Conduct Record Retention, states in part:

Section 4. Records Required for Market Conduct Purposes

- A. Every entity subject to the Market Conduct process shall maintain its books, records, documents and other business records in a manner so that the following practices of the entity subject to the Market Conduct process may be readily ascertained during market conduct examinations, including but not limited to, company operations and management, policyholder services, claim's practices, rating, underwriting, marketing, complaint/grievance handling, producer licensing records, and additionally for health insurers/carriers or related entities: network adequacy, utilization review, quality assessment and improvement, and provider credentialing. Records for this regulation regarding market conduct purposes shall be maintained for the current calendar year plus two prior calendar years.
- B. Each producer of record, if the carrier does not maintain, shall maintain records for each policy sold, and the records shall contain all work papers and written communications in the producer's possession pertaining to the documented policy.

Section 11. Time Limits To Provide Records And To Respond To Examiners

- A. An insurer/carrier shall provide any record requested by any examiner as required by Regulation 1-1-8 or such other time period as mutually agreed upon by the examiner and the insurer/carrier. When the requested record is not or cannot be produced by the insurer/carrier within the specified time period, a violation shall be deemed to have occurred, unless the insurer/carrier can demonstrate to the satisfaction of the commissioner that the requested record cannot reasonably be provided within the specified time period of the request through no fault of its own, its agents or its contracted third party administrator.

Colorado Insurance Regulation 3-5-1, Title Insurance, effective 8-31-2005, states in part:

Section 6. Rules Regarding Consumer Protections

- K. Each title entity shall maintain adequate documentation and records sufficient to show compliance with this regulation and Title 10, parts 4 and 11, for a period of not less than seven (7) years, except as otherwise permitted by law. (Note the same provision is found in Section 7 (L) of Regulation 3-5-1, effective 1-1-2007)

The Southern data response reported the Company issued 3,517 owner policies, 7,883 lender policies and ninety-one (91) guaranty products. A sufficient sample of title files was requested under the guidelines established by the NAIC Market Conduct Examiners Handbook. The file request included 114 loan policy files, sixty-two (62) owner policy files and thirty (30) title guarantee files. The ultimate sample sought was 50 owner policies, 100 loan policies and 25 guaranty files. The sample would thus be composed of 1.42% of owner policy files, 1.27% of loan policy files and 27.47% of guaranty files. The file request was communicated to the company on May 30, 2008 and the company was given to July 1, 2008 to produce the requested files.

It appears that the Company is not in compliance with Colorado insurance law in that it failed to produce some of the requested files for review. The table below shows the numbers of files requested, provided, and missing, and the error rate.

Type	Requested	Provided	Missing	Error Rate
Loan Policy	114	85	29	25%
Owner Policy	62	41	21	34%
Guaranty	30	24	6	20%
Total	206	150	56	27%

In addition, although the Company produced 126 files for owner and loan policies, thirty-two (32) of those files were missing policy forms.

Files Provided	Policies Provided	Missing Policies	Error Rate
126	94	32	25%

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**Recommendation No. 1:**

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of § 10-11-116 C.R.S., and Colorado Insurance Regulations 1-1-7, and 3-5-1. In the event the Company is unable to show such proof, it should provide evidence to the Division that it has revised its procedures to ensure that all records required for market conduct purposes are maintained and can be provided within the required time period.

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**Issue A2: Failure to provide adequate agency oversight.**

Section 10-1-128, C.R.S., Fraudulent insurance acts, states in part:

- (5) (a) Every licensed insurance company doing business in Colorado shall prepare, implement, and maintain an insurance anti-fraud plan; except that this subsection (5) shall not apply to entities whose principal business is the assumption of reinsurance, reinsurance agreements, or reinsurance claims transactions. Insurance companies approved by the commissioner under article 5 of this title may be required, as a condition of such approval, to maintain an insurance anti-fraud plan. Each anti-fraud plan shall outline specific procedures, appropriate to the type of insurance provided by the insurance company in Colorado, to:
  - (I) Prevent, detect, and investigate all forms of insurance fraud, including fraud by the insurance company's employees and agents, fraud resulting from false representations or omissions of material fact in the application for insurance, renewal documents, or rating of insurance policies, claims fraud, and security of the insurance company's data processing systems;

Section 10-2-401, C.R.S., License required, states in part:

- (1) No person shall act as or hold oneself out to be an insurance producer unless duly licensed as an insurance producer in accordance with this article. Every insurance producer who solicits or negotiates an application for insurance of any kind on behalf of an insurer shall be regarded as representing the insurer and not the insured or any beneficiary of the insured in any controversy between the insurer and such insured or beneficiary. A person shall not sell, solicit, or negotiate insurance in this state for any class or classes of insurance unless the person is licensed for that line of authority in accordance with this article.

Section 10-2-404, Application for license, states in part:

- (2) An insurance agency or business entity acting as an insurance producer shall obtain an insurance producer license. Application shall be made on a form specified by the commissioner. Before approving the application, the commissioner shall verify that:
  - (d) The insurance agency or business entity has designated a licensed producer who is an officer, partner, or director responsible for the insurance agency's or business entity's compliance with the insurance laws and rules of this state;

Section 10-2-406, C.R.S. Licensing of agencies, states in part:

- (1) For the purposes set forth in section 10-2-701, an insurance agency or business entity shall be licensed as an insurance producer.
- (2) (a) The insurance agency or business entity shall register the name of every natural person who, as a member, officer, director, stockholder, owner, or

employee of the agency or business entity, is acting as and is licensed as an insurance producer.

- (3) The insurance agency or business entity shall, within ten days, notify the commissioner, on a form prescribed by the commissioner, of every change relative to the licensed individual insurance producers registered and authorized to act as insurance producers for the insurance agency or business entity.

Section 10-2-702, C.R.S., Commissions, states in part:

- (1) No insurer or insurance producer shall pay, directly or indirectly, any commission, service fee, brokerage, or other valuable consideration to any person selling, soliciting, or negotiating insurance within this state unless, at the time such services were performed, such person was a duly licensed insurance producer under this article for the performance of such services. In addition, no person, other than a person appropriately licensed by this state as an insurance producer at the time such services were performed, shall accept any such consideration; except that any person duly licensed under this article may pay or assign such person's commissions to, or direct that such person's commissions be paid to, a partnership of which the person is a member, employee, or agent or to a corporation of which the person is an officer, employee, or agent. This section shall not prevent payment or receipt of renewal or other deferred commissions to or by any person entitled thereto under this section.

Section 10-11-102, C.R.S., Definitions, states in part:

- (3) The "business of title insurance" means the making or proposing to make, as insurer, guarantor, or surety, of any contract or policy of title insurance; or the transacting or proposing to transact, as insurer, guarantor, or surety, any phase of title insurance, including solicitation, negotiation preliminary to execution, execution of a contract of title insurance, and transacting matters subsequent to the execution of the contract and arising out of it, including reinsurance, and the performance of closing and settlement services by a title insurance company or title insurance agent in conjunction with the issuance of any contract or policy of title insurance.
- (3.5) "Closing and settlement services" means providing services for the benefit of all necessary parties in connection with the sale, leasing, encumbering, mortgaging, creating a secured interest in and to real property, and the receipt and disbursement of money in connection with any sale, lease, encumbrance, mortgage, or deed of trust.

- (9) "Title insurance agent" means a person authorized by a title insurance company to solicit insurance or to collect premiums or to issue or countersign policies in its behalf.

Section 10-11-116, C.R.S., Title insurance agents licensed, states in part:

- (1) (a) Title insurance agents shall be licensed in the manner provided for insurance producers in part 4 of article 2 of this title, except as otherwise provided in this section.

Colorado Insurance Regulation 1-1-7, Market Conduct Record Retention, states in part:

Section 7. Licensing Records

Records to be maintained relating to the insurer's compliance with licensing requirements shall include the licensing records of each producer associated with the insurer. Licensing records shall be maintained so as to show clearly the status of the producer at the time the application was taken as well as the dates of the appointment and termination of each producer. A screen print from the NAIC Producer Database (PDB) or the Colorado Division of Insurance Database may serve to provide adequate proof only of an agent's current licensing status.

Colorado Insurance Regulation 1-2-10, Concerning the Regulation of Colorado Insurance Producers, states in part:

Section 7 Designation of Responsible Producer and Agency Registration of Producers

Pursuant to §10-2-404(2)(a-f), C.R.S., each agency must designate the following:

- A. Responsible Producer - Each insurance agency must designate a licensed producer who is an officer, partner, or director and who will be responsible for the insurance agency's or business entity's compliance with the laws and rules of Colorado.
- B. All Licensed Officers, Directors, Partners, or Owners - Each agency is also required to register each person who, as an officer, director, partner, owner, or member of the agency or business entity is acting and is licensed as an insurance producer. In addition, agencies are also required to disclose all officers, partners, and directors, whether or not they are licensed as insurance producers.

Colorado Insurance Regulation 3-5-1, Title Insurance, effective 8-31-2005, states in part:

Section 6. Rules Regarding Consumer Protections

- (J) Each title entity shall exercise reasonable efforts to ensure that the acts of its authorized agents performed within the

scope of the person's employment by the title entity, including closing agents and title insurance agencies, comply with all laws concerning the business of title insurance. (Note the same provision is found in Section 7 (L) of Regulation 3-5-1, effective 1-1-2007)

It appears that the Company is not in compliance with Colorado insurance law in that it accepted title insurance business from unlicensed title insurance producers during the examination period. Four (4) of the sample of fifteen (15) policy files that reportedly came from American Title Services, were actually policies issued by America's Home Title. America's Home Title was not identified by Southern as an authorized issuing agent and was not licensed. Interrogatory responses regarding both active and cancelled agents for the prior three (3) years have no mention of America's Home Title. America's Home Title was apparently an unlicensed affiliated business arrangement created by American Title Services. The policy data submitted by the company of all policies issued during the examination period of January 1, 2006 to December 31, 2007 does not identify any policies as being issued by America's Home Title. The company apparently considered those policies as issued by their agent, American Title Services.

This would indicate that 26.67%, of the total files attributable to American Title Services, were issued by an entity that is not an agent of Southern. Southern accepted policies and remittances from America's Home Title and the unlicensed entity retained a commission. The policy information provided by Southern indicates 1,672 policies were issued by American Title Services. Assuming the sample is representative of the population, it could be expected that the same percentage of the file population or approximately four hundred forty-six (446) policies were issued by America's Home Title.

In addition, Denver Land Title, Inc. was an agent of Southern from June 2, 2005 until their cancellation on August 22, 2007. Denver Land Title did not have a Responsible Producer as of January 1, 2007. The policy records of Southern indicate that 295 Southern title policies were issued by Denver Land Title after January 1, 2007 in apparent violation of §§ 10-2-402 (2)(D) and 10-2-702 C.R.S. and Regulation 1-2-10. There were seventeen (17) files, in the sample, from Denver Land Title, Inc., five (5) of those files were policies issued in violation of the licensing statutes, for an error rate of 29.41%.

It would be expected that an effective agent audit program would have identified the above problems. The company has failed to have a valid up to date audit program for its agents. The company reported thirty-one (31) agents represented the company in Colorado during the examination period. Twenty-four (24) of those agents issued more than one (1) Southern owner or lender policy or title guaranty during that period. However, the company only provided limited audits of eight (8) of those agents in the two year period. A significant note is Southern's largest Colorado agent was not audited until two months before the end of the examination period. Thus two-thirds of the agents were not audited at all during the two year examination period for an error rate of 66.67%.

Number Issuing Agents	Agents Audited	Agents Not Audited	Error Rate
24	8	16	66.67%

Of the agents audited, over half of those audits revealed irregularities in the handling and accounting of escrow funds. There was no documented follow-up on these findings. An effective agent audit process is the best safeguard against fraud. The unaudited agents

accounted for 28% of the total owner policies issued and 35% of the total lender policies issued.

The scope of the company audit was also very limited. The company auditors did not evaluate rating, underwriting, fees, forms, security, regulatory compliance, claims, business process or evaluate title files to determine whether the agent had conducted a reasonable search. The only areas of agent oversight were remittance practice, escrow accounting, and escrow files.

The absence of agent oversight regarding regulatory compliance, as required by Regulation 3-5-1, was evident in the review of files in the sample. Numerous agents and files contained misnamed endorsements, incomplete endorsements, and endorsements issued on forms of other underwriters, all indicating a lack of internal controls.

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**Recommendation No. 2:**

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of §§ 10-1-128., 10-2-401, 10-2-406, 10-2-406, 10-2-702, 10-11-102, and 10-11-116 C.R.S., and Colorado Insurance Regulations 1-1-7, 1-2-10 and 3-5-1. In the event the Company is unable to show such proof, it should provide evidence to the Division that it has revised its procedures to ensure that a comprehensive and effective agent oversight program is developed and operational.

**Issue A3: Failure to provide adequate oversight of agent affiliated business arrangements in violation of Colorado insurance law and the Real Estate Settlement Procedures Act (RESPA).**

24 CFR § 3500.15, Affiliated business arrangements, states in part:

- (b) Violation and exemption. An affiliated business arrangement is not a violation of section 8 of RESPA (12 U.S.C. 2607) and of §3500.14 if the conditions set forth in this section are satisfied. Paragraph (b)(1) of this section shall not apply to the extent it is inconsistent with section 8(c)(4)(A) of RESPA (12 U.S.C. 2607(c)(4)(A)).

- (1) *The person making each referral has provided to each person whose business is referred a written disclosure, in the format of the Affiliated Business Arrangement Disclosure Statement set forth in appendix D of this part, of the nature of the relationship (explaining the ownership and financial interest) between the provider of settlement services (or business incident thereto) and the person making the referral and of an estimated charge or range of charges generally made by such provider (which describes the charge using the same terminology, as far as practical, as section L of the HUD-1 settlement statement). The disclosures must be provided on a separate piece of paper no later than the time of each referral or, if the lender requires use of a particular provider, the time of loan application, except that: [Emphases added.]*

24 CFR § 3500.19, Enforcement, states in part:

- b) Violations of section 8 of RESPA (12 U.S.C. 2607), §3500.14, or §3500.15. Any person who violates §§3500.14 or 3500.15 shall be deemed to violate section 8 of RESPA and shall be sanctioned accordingly.

Section 10-11-124, C.R.S., Affiliated business arrangements – rules, states in part:

- (1) (b) *A title insurance company or a title insurance agent making a referral as part of an affiliated business arrangement shall disclose the affiliation in accordance with the federal "Real Estate Settlement Procedures Act", 12 U.S.C. sec. 2601 et seq.*
  - (c) *Neither a title insurance company nor a title insurance agent shall require the use of an affiliated business arrangement or a particular settlement producer as a condition of obtaining title insurance services from the company or agent. For the purposes of this paragraph (c), "require the use" shall have the same meaning as "required use" in 24 CFR 3500.2 (b). [Emphases added.]*

Section 10-11-102, C.R.S., Definitions, states in part:

As used in this article, unless the context otherwise requires:

- (1) "Affiliated business arrangement" means an arrangement in which:
  - (a)(I) A settlement producer or an associate of such producer has either an affiliate relationship with, or a direct beneficial ownership interest of more than one percent in, a title insurance company or title insurance agent; or
  - (II) A title insurance company or a title insurance agent who has either an affiliate relationship with, or a direct beneficial ownership interest of more than one percent in a settlement producer; and
  - (b) A corporation or business entity that controls, is controlled by, or is under common control with such person;
- (2.5) "Associate" means a person who has one or more of the following relationships with a person in a position to refer settlement service business:
  - (b)(I) Either the settlement producer or the agent of the settlement producer directly or indirectly refers settlement service business to that title insurance company or title insurance agent or affirmatively influences the selection of that title insurance company or title insurance agent; or
  - (II) Either the title insurance company or the title insurance agent directly or indirectly refers settlement services business to a settlement producer or associate or affirmatively influences the selection of the settlement producer or associate.
- (6.7) "Settlement service" means any service provided in connection with a real estate settlement. "Settlement services" include, but are not limited to, the following:
  - (q) Escrow handling services;
  - (r) The handling of the processing; and
  - (s) Closing of settlement.

24 CFR 3500.2, Definitions, states in part:.

- (a) Statutory terms. All terms defined in RESPA (12 U.S.C. 2602) are used in accordance with their statutory meaning unless otherwise defined in paragraph (b) of this section or elsewhere in this part.
  - (b) Other terms. As used in this part:
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*Required use means a situation in which a person must use a particular provider of a settlement service in order to have access to some distinct service or property, and the person will pay for the settlement service of the particular provider or will pay a charge attributable, in whole or in part, to the settlement service. [Emphases added.]*

Colorado Insurance Regulation 3-5-1, Title Insurance, effective 1-1-2007, states in part:

Section 6. Regarding Standards of Conduct for Title Insurance Entities

B. Affiliated Business Arrangements:

3. An affiliated business arrangement shall comply with the disclosure requirements set forth in § 10-11-124 (1)(b), C.R.S. Such disclosure shall be in accordance with the “Real Estate Settlement Procedures Act”, 12 U.S.C. sec 2601, et seq. The title entity shall maintain documentation of such disclosure in its title and/or escrow file for no less than a period of seven (7) years.

Colorado Insurance Regulation 3-5-1, Title Insurance, effective 8-31-2005, states in part:

Section 6. Rules Regarding Consumer Protections

- J. Each title entity shall exercise reasonable efforts to ensure that the acts of its authorized agents performed within the scope of the person’s employment by the title entity, including closing agents and title insurance agencies, comply with all laws concerning the business of title insurance. (Note the same provision is found in Section 7 (L) of Regulation 3-5-1, effective 1-1-2007)

It appears that the Company is not in compliance with Colorado insurance law in that its agents frequently require customers to use unregulated settlement service providers owned or controlled by the agents. The Company involvement in this practice included formal approval of the controlled escrow and closing companies.

Consumers are unaware of the intricate networks of affiliated business arrangements. In these cases the same person is the principal owner of both the title insurance agency and the closing or settlement service provider. In these cases, for the person to receive a title insurance policy they must use the affiliated closing or settlement service provider.

These settlement service companies are not title insurance agents themselves, not licensed and in fact, are an unregulated business operating outside the umbrella of consumer protection and accountability. There was no evidence in any of the files reviewed that consumers had been informed of or consented to the services of the affiliated closing business, as required by Colorado law.

Allowing its agents to require use of an affiliated business as a condition to issuance of a title insurance policy and failure to provide notice of the affiliation is a violation of RESPA and §10-11-124 C.R.S and Regulation 3-5-1.

**Failure to provide notice and choice regarding Affiliated Business Arrangements**

Files in Sample	Files with Errors	Error Rate
120	50	41.67%

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**Recommendation No. 3:**

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of §10-11-124, C.R.S., and Colorado Insurance Regulation 3-5-1, as well as the following Federal Regulations: 24 C.F.R. §3500.15 (2004), and 24 C.F.R. § 3500.19 (2004). In the event the Company is unable to show such proof, it should provide evidence to the Division that it has revised its agency structure and procedures to ensure that it is not actively or passively in violation of the cited laws.

<p><b><u>RATING</u></b></p>
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**Issue C1: Failure, in some instances, to charge accurate rates.**

Section 10-3-1104, C.R.S., Unfair methods of competition and unfair or deceptive acts or practices, states in part:

- (1) The following acts are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:
  - (f) Unfair discrimination:
    - (II) Making or permitting any unfair discrimination between individuals of the same class or between neighborhoods within a municipality and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of insurance, or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever;

Section 10-4-403, C.R.S., Standards for rates - competition - procedure - requirement for independent actuarial opinions regarding 1991 legislation, states in part:

- (1) Rates shall not be excessive, inadequate, or unfairly discriminatory. The following rate standards shall apply:
  - (c) Concerning unfair discrimination, unfair discrimination exists if, after allowing for practical limitations, price differentials fail to reflect equitably the differences in expected losses and expenses. A rate is not unfairly discriminatory solely if different premiums result for policyholders with like loss exposures but different expenses, or like expenses but different loss exposures, so long as the rate reflects the differences with reasonable accuracy. Additionally, the provisions of section 10-3-1104 (1) (f) shall apply.

Section 10-11-118, C.R.S., Title insurance, states in part:

- (1) Title insurance rates and fees shall be regulated in the manner provided in part 4 of article 4 of this title, except as otherwise provided in this section.
- (2)(a) Every title insurance company and title insurance agent shall have on file in the company's or agent's principal office within the state:
  - (I) The schedule of rates, fees, and every amendment thereto, including the effective date of the schedule amendment;
  - (II) A statement of compliance by an officer of the title insurance company or the title insurance agent that to the best of the officer's knowledge each rate or fee in use complies with Colorado law; and

- (III) Information or supporting documentation that demonstrates compliance with section 10-4-403.
- (b) Prior to the effective date of any new or amended rate or fee, every title insurance company and title insurance agent shall file with the commissioner such new or amended rate or fee. Such filing shall not include the information or supporting documentation described in paragraph (a) of this subsection (2). Every title insurance company and title insurance agent shall make available upon request to the commissioner the statement of compliance and all information or supporting documentation referred to in paragraph (a) of this subsection (2).
- (c) No title insurance company or title insurance agent shall use any rate or fee in the business of title insurance prior to its effective date, and no rate or fee increase or decrease shall apply to title policies or services that have been contracted for prior to such effective date. All such rates or fees shall be readily available to the public in each office of the title insurance company or title insurance agent in the county to which said rates or fees apply.

Colorado Insurance Regulation 3-5-1, Title Insurance, effective 8-31-2005, states in part:

Section 4. Rules Regarding Rates And Fees

- F. No title entity shall quote any rate or fee or closing and settlement service charge to any person which is more or less than that currently available to others for the same type of title policy or service in a like amount, covering property in the same county and involving the same factors as set forth in its then current schedule of rates and fees. (Note the same provision is found in Section 5 (F) of Regulation 3-5-1, effective 1-1-2007)

Section 6. Rules Regarding Consumer Protections

- J. Each title entity shall exercise reasonable efforts to ensure that the acts of its authorized agents performed within the scope of the person's employment by the title entity, including closing agents and title insurance agencies, comply with all laws concerning the business of title insurance. (Note the same provision is found in Section 7 (L) of Regulation 3-5-1, effective 1-1-2007)

Colorado Insurance Regulation 3-5-1, Title Insurance, effective 1-1-2007, states in part:

Section 5. Rules Regarding Rates And Fees

- D. No rate or fee can be charged unless it is on the currently effective schedule at the time that the commitment and/or policy or closing and settlement service is contracted. Title insurance companies may not use different rates for different title insurance agents for the same risk in the same county.

It appears that the Company is not in compliance with Colorado insurance law in that it permitted unfair discrimination with respect to the title insurance premium charged in conjunction with the issuance of title insurance policies, by allowing agents to charge premiums that were determined in a manner not consistent with filed rules and rates according to §10-11-118 C.R.S. The nature of these errors include, but are not limited to, application of an incorrect rate for an owners policy, incorrect rates charged for owner and lender endorsements, charges for endorsements not issued, application of an incorrect rate on lender policies, failure to follow rating rules of the Company, incorrect rates on guaranty products. The table below illustrates the extent of deviation.

Type	Total Policy Population	No. Policies Examined	No. Files over charged	Total Amount of over charges	No. Files under charged	Total Amount of under charges	Total No. files with Errors	Error Rate (Ratio)
Owner	3,517	71	23	\$3,624.00	7	\$865.00	30	42%
Lender	7,883	115	8	\$621.00	4	\$249.00	12	10.4%
Endorsements	N/A	156	24	\$1,700.00	12	\$321.00	36	23%
<b>Total</b>	<b>11,400</b>	<b>186</b>	<b>47</b>	<b>\$5,945.00</b>	<b>20</b>	<b>\$1,435.00</b>	<b>67</b>	<b>36%</b>

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#### **Recommendation No. 4:**

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of §§ 10-3-1104, 10-4-403, and 10-11-118 C.R.S., and Colorado Insurance Regulation 3-5-1. In the event the Company is unable to show such proof, it should provide evidence to the Division that it has revised its procedures to ensure that all title policies are issued with premium determinations that are consistent with filed rates. In addition, the Company should be required to conduct a self-audit and refund all premium overcharges identified as a result of the audit.

**UNDERWRITING**

**Issue H1: Failure to ensure that agents comply with the notice requirements of Colorado insurance law concerning severed mineral estates.**

Section 10-11-123, C.R.S., Notification of severed mineral estates, states in part:

- (1) For purposes of this section:
  - (a) "Mineral estate" means a mineral interest in real property.
  - (b) "Severed" means that the surface owner does not own all or any part of the mineral estate.
  - (c) "Surface estate" means an interest in real property that does not include the full mineral estate as shown by recorded documents that impart constructive notice in the office of the clerk and recorder of the county in which the real property is situated.
  - (d) "Surface owner" means the owner of the surface estate and any purchaser with rights under a contract to purchase all or part of the surface estate.
- (2) A title insurance agent or title insurance company shall provide, as part of each title commitment for the issuance of an owner's title insurance policy, the following written statement when it is determined that a mineral estate has been severed from the surface estate:
  - (a) That there is recorded evidence that a mineral estate has been severed, leased, or otherwise conveyed from the surface estate and that there is a substantial likelihood that a third party holds some or all interest in oil, gas, other minerals, or geothermal energy in the property; and
  - (b) That such mineral estate may include the right to enter and use the property without the surface owner's permission.
- (3) In determining compliance with this section, a title insurance agent or title insurance company may rely on recorded documents that impart constructive notice in the office of the clerk and recorder of the county in which the real property is situated and shall not be liable for any errors or omissions in such records.
- (4) A title insurance company or title insurance agent may rely on any document purporting to sever mineral interests to act as notice of such severance when such document is recorded in the office of the county clerk and recorder in the county in which the real property is situated.

- (5) A title insurance agent or title insurance company shall be deemed to be in compliance with this section when it relies on any document purporting to sever mineral interests or to act as notice of such severance when such document is recorded in the office of the county clerk and recorder of the county in which the real property is situated. No title insurance agent or title insurance company shall be liable for obligations above, or for an amount in excess of, those stated in the owner's policy of title insurance issued pursuant to the commitment for failure to comply with the provision of subsection (2) of this section.

Colorado Insurance Regulation 3-5-1, Title Insurance, effective 8-31-2005, states in part:

Section 6. Rules Regarding Consumer Protection

- J. Each title entity shall exercise reasonable efforts to ensure that the acts of its authorized agents performed within the scope of the person's employment by the title entity, including closing agents and title insurance agencies, comply with all laws concerning the business of title insurance. (Note the same provision is found in Section 7 (L) of Regulation 3-5-1, effective 1-1-2007)

Colorado insurance laws state that a company is only deemed to be in compliance when it "*relies on any document purporting to sever mineral interests or to act as notice of such severance when such document is recorded in the office of the county clerk and recorder of the county in which the real property is situated.*" (§10-11-123 (5)) Therefore, it appears non-compliance can occur when an agent or company either takes exception to severed mineral interests and fails to give the notice, or provides the notice but fails to rely on a recorded document that purports to sever mineral interests. Any file in which the notice is given and a general exception to severed mineral interests is cited, where there is no evidence of a search of recorded documents, is considered not in compliance with the statute.

The examination of seventy-one (71) files containing owner policies, demonstrated an absence of the notice required under §10-11-123 C.R.S. in thirty (30) files. An additional nineteen (19) files carried the §10-11-123 C.R.S. notice; however, they did not identify a recorded severance of mineral rights.

**Failure to Provide Notice or Identify Mineral Interests**

<b>Total Population</b>	<b>Owner Policy files examined</b>	<b>Mineral Exception w/o 10-11-123 Notice</b>	<b>10-11-123 Notice w/o evidence of recorded severance document</b>	<b>Error Rate</b>
<b>3,517</b>	<b>71</b>	<b>30</b>	<b>19</b>	<b>69%</b>

**Recommendation No. 5:**

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of §10-11-123 C.R.S. and Colorado Insurance Regulation 3-5-1. In the event the Company is unable to show such proof, it should provide evidence to the Division that it has revised its procedures to ensure that all title commitments for owner policies in Colorado provide such references to recorded severance documents and the §10-11-123 C.R.S. notice. Furthermore, the company should be estopped from asserting any defense based on §10-11-123 C.R.S. in any claim in which the underlying title file purports to take exception to any mineral interest unless based on reference to a recorded instrument, likewise as to any file in which the §10-11-123 C.R.S. notice was not provided.

**Issue H2: Failure to ensure that agents conduct a reasonable examination of title and to fully disclose impairments of record.**

Section 10-11-106 C.R.S. Determination of insurability required, states in part:

- (1) No policy or contract of title insurance shall be written unless and until the title insurance company has caused to be conducted a reasonable examination of the title and has caused to be made a determination of insurability of title in accordance with sound underwriting practices for title insurance companies. Evidence thereof shall be preserved and retained in the files of the title insurance company or its agent for a period of not less than seven years after the policy or contract of title insurance has been issued. In lieu of retaining the original copy, the title insurance company, or the agent of the title insurance company, may, in the regular course of business, establish a system whereby all or part of these writings are recorded, copied, or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, or other process which accurately reproduces or forms a durable medium for reproducing the original.

Colorado Insurance Regulation 3-5-1, Title Insurance, effective 8-31-2005, states in part:

Section 6. Rules Regarding Consumer Protection.

- A. Every title entity shall ensure that the title commitment, as may be amended or modified, fully discloses to all recipients of any title insurance commitment the impairments of record concerning the property to be insured, the extent of coverage proposed, all proposed title exceptions, and in a clear and conspicuous manner, shall show whether the title insurance commitment does or does not commit to insure over or delete those exceptions to title specified therein, consistent with Section 10-11-106, C.R.S. (Note the same provision is found in Section 5 (F) of Regulation 3-5-1, effective 1-1-2007)

Colorado Insurance Regulation 3-5-1, Title Insurance, effective 1-1-2007, states in part:

Section 7. Rules Regarding Consumer Protection.

- L. Each title entity shall maintain adequate documentation and records sufficient to show compliance with this regulation and Title 10, parts 4 and 11, for a period of not less than seven (7) years, except as otherwise permitted by law.

The determination of insurability in title insurance begins with the title search and title examination. This process is a historical search of the public record and an examination of the documents in the chain of title. The statutory standard of §10-11-106(1) “reasonable examination of title” is a relative standard with which to measure compliance, the extent of search a reasonably prudent examiner would conduct.

Regulation 3-5-1 very clearly and specifically creates a duty by the insurer to “fully disclose” to everyone provided with a title commitment, all “the impairments of record concerning the property.” Therefore,

the duty of the title insurance provider is not to just determine insurability, but also to disclose all impairments of record to the consumer. Therefore, applying this regulation to the §10-11-106(1) standard of “reasonable examination of title”, it is clear that a “reasonable examination of title” is one which will reveal “the impairments of record concerning the property to be insured.”

The Company is not in compliance with Section 10-11-106 C.R.S. in that its agents failed to comply with requirements concerning evidence of a reasonable examination of title and to fully disclose impairments of record as required by Regulation 3-5-1. Exceptions to compliance are found in examining the files to determine whether there is any evidence of a title search and whether the title commitment and/or title policy fully disclose impairments of record concerning the property.

**Failure to Provide Evidence of a Reasonable Search and Fully Disclose Impairments of Record**

<b>File Population</b>	<b>File Sample</b>	<b>No Evidence of Search</b>	<b>Error Rate</b>	<b>No Disclosure of impairments of record</b>	<b>Error Rate</b>
Loan Policies (7,883)	Lender Sample (80)	36	45%	69	86.25%
Owner Policies (3,517)	Owner Sample (40)	21	52.5%	29	72.5%
Total (11,400)	Totals (120 files)	57	47.5%	98	81.67%

**Recommendation No. 6:**

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of §10-11-106 C.R.S. and Colorado Insurance Regulation 3-5-1. In the event the Company is unable to show such proof, it should provide evidence to the Division that it has revised its procedures to ensure that all title commitments will be based on a comprehensive search and examination of title and such commitments will fully disclose all impairments of record. Furthermore, the company should be estopped from asserting any defense based on any exception to coverage in Schedule B-2 of any Colorado policy which does not fully disclose a reference to a specific recorded instrument.

**ESCROW, CLOSING AND SETTLEMENT SERVICES**

## CONFIDENTIAL DRAFT REPORT

Market Conduct Examination

Southern Title Insurance Corporation

<b>Issue K1: Failure by the Company to ensure that all funds disbursed by its authorized agents at closings were accurately reported on the HUD-1 form.</b>
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12 U.S.C. § 2603. Uniform settlement statement, states in part:

- (a) ... Such form shall conspicuously and clearly itemize all charges imposed upon the borrower and all charges imposed upon the seller in connection with the settlement and shall indicate whether any title insurance premium included in such charges covers or insures the lender's interest in the property, the borrower's interest, or both.

PART Title 24: Housing and Urban Development

3500—REAL ESTATE SETTLEMENT PROCEDURES ACT

§ 3500.8 Use of HUD-1 or HUD-1A settlement statements states in part:

- (b) Charges to be stated . The settlement agent shall complete the HUD-1 or HUD-1A, in accordance with the instructions set forth in Appendix A to this part. The loan originator must transmit to the settlement agent all information necessary to complete the HUD-1 or HUD-1A.
  - (1) In general . *The settlement agent shall state the actual charges paid by the borrower and seller on the HUD-1, or by the borrower on the HUD-1A. The settlement agent must separately itemize each third party charge paid by the borrower and seller.* All origination services performed by or on behalf of the loan originator must be included in the loan originator's own charge. Administrative and processing services related to title services must be included in the title underwriter's or title agent's own charge. The amount stated on the HUD-1 or HUD-1A for any itemized service cannot exceed the amount actually received by the settlement service provider for that itemized service, unless the charge is an average charge in accordance with paragraph (b)(2) of this section. (Emphasis added)

Appendix A to Part 3500—Instructions for Completing HUD-1 and HUD-1a states in part:

Settlement Statements;

The following are instructions for completing the HUD-1 settlement statement, required under section 4 of RESPA and 24 CFR part 3500 (Regulation X) of the Department of Housing and Urban Development regulations. *This form is to be used as a statement of actual charges and adjustments paid by the borrower and the seller, to be given to the parties in connection with the settlement.* The instructions for completion of the HUD-1 are primarily for the benefit of the settlement agents who prepare the statements and need not be transmitted to the

## CONFIDENTIAL DRAFT REPORT

### Market Conduct Examination

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parties as an integral part of the HUD-1. There is no objection to the use of the HUD-1 in transactions in which its use is not legally required. Refer to the definitions section of HUD's regulations (24 CFR 3500.2) for specific definitions of many of the terms that are used in these instructions. (Emphasis added)

#### General Instructions

*The settlement agent shall complete the HUD-1 to itemize all charges imposed upon the Borrower and the Seller by the loan originator and all sales commissions, whether to be paid at settlement or outside of settlement, and any other charges which either the Borrower or the Seller will pay at settlement. Charges for loan origination and title services should not be itemized except as provided in these instructions. For each separately identified settlement service in connection with the transaction, the name of the person ultimately receiving the payment must be shown together with the total amount paid to such person. (Emphasis added)*

Colorado Insurance Regulation 3-5-1, Title Insurance, effective 8-31-2005, states in part:

#### Section 6. Rules Regarding Consumer Protections

- J. Each title entity shall exercise reasonable efforts to ensure that the acts of its authorized agents performed within the scope of the person's employment by the title entity, including closing agents and title insurance agencies, comply with all laws concerning the business of title insurance. (Note the same provision is found in Section 7 (L) of Regulation 3-5-1, effective 1-1-2007)

Colorado Insurance Regulation 3-5-1, Title Insurance, effective 1-1-2007, states in part:

#### Section 12. Incorporated Material

The following are hereby incorporated by reference as written on or before the effective date of this regulation.

- C. The federal Real Estate Settlement Procedures Act, 12 U.S.C. sec. 2601 et seq.

It appears that the Company is not in compliance with RESPA and thus with Colorado Insurance Regulation 3-5-1 in that its agents failed to comply with requirements concerning documentation of disbursements from real estate and loan closings. These errors took various forms. The error group includes those files for which a HUD-1 form had been completed and the figures did not match the check disbursement register in the file. Therefore, the HUD-1 was not a "*statement of actual charges and adjustments paid by the borrower and the seller*". The file sample was adjusted to remove the files that had been closed by someone other than the issuing agent, as none of the files closed by unregulated independent or affiliated closing services contained any HUD-1 forms or disbursement records. Almost all of the errors resulted from charges listed on the HUD-1 which were not included as payments made in the disbursement register. These were frequently charges shown for document recording on the HUD-1 which were greater than the amounts actually paid.

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### Incorrect Information on HUD-1 Statement

Total Policy Population	File Sample	Failure to Provide Accurate Information on the HUD-1 Statement	Error Rate
11,400	Totals (103 files)	48	46.6%

### **Recommendation No. 7:**

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Colorado Insurance Regulation 3-5-1. In the event the Company is unable to show such proof, it should provide evidence to the Division that it has revised its procedures to ensure that all files will contain an accurate HUD-1 reflecting the actual charges and adjustments paid for or on behalf of the borrower and the seller.

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**SUMMARY OF ISSUES AND RECOMMENDATIONS**

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